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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

MICHAEL PAUL KUNZLER,

Plaintiff,

V.

DAN BRIGGS,

Defendant.

**PLAINTIFF'S MOTION TO REVIEW
DEFENDANT'S EXHIBIT 118 AND
COURT'S RULING ON OPINION
TESTIMONY**

Case No. 1:16-cv-00109

Judge Clark Waddoups

Plaintiff, through his counsel of record, requests this Court review and address two related issues during the July 26, 2023 Final Pretrial Conference:

I. Defendant Exhibit 118 Should Be Stricken or Redacted.

Plaintiff would like the Court's input regarding Defendant's Exhibit 118, the March, 2015 email chain which ultimately led to the publication of the April 23, 2015 Media Alert. A copy of Exhibit 118 is attached hereto. At trial, the exhibit should either be excluded or redacted.

The objectionable portion of the exhibit is David Furlong's March 13, 2015 email stating: "Dan did a GREAT job on this investigation..." Furlong is a co-worker with Defendant Dan Briggs at DOPL.

Plaintiff believes Furlong's comment violates this Court's ruling from the March 11, 2020 Final Pretrial Conference (see hearing transcript, doc.103, at 62). That ruling prohibited opinion testimony from someone not an expert in the field.

The Court provided "some guidance" in the context of permissible testimony of three of Plaintiff's attorney witnesses, Troy Rawlings, Mark Moffat, and Hal Reiser. Steve Owens, another attorney/witness, was not included in that discussion.

Well, let me see if I can give some guidance to you because this is not an issue that can be resolved today but will have to be resolved at the time the testimony

With respect to a witness's opinion as to whether the investigation was carried out or not well carried out, I don't think that's an appropriate issue for someone who is not an expert in this field. None of these people are —should be allowed to express opinions as to their view as to how well the investigation by Mr. Briggs was carried out.

Id. at 62: 15-25.

This issue came to the forefront just this week via an informal exchange of emails between the parties' counsel. Defendant's counsel stated that the "ruling does not apply to David Furlong, who does have expertise about DOPL investigations."

The parties addressed but did not resolve Plaintiff's concerns about Exhibit 118 and Furlong's email comment about Defendant's "GREAT investigation." Further, Defendant argues that Furlong's comments do not open the door for testimony by Moffat, Rawlings, or Reiser. Plaintiff disagrees. If Furlong is permitted to testify

about the great investigation performed by the Defendant, Plaintiff should be permitted to rebut such opinion testimony.

II. This Court Should Review its Ruling Limiting the Three Attorney Witnesses.

The individual testimony of Moffat (defense attorney), Rawlings (chief prosecutor), and Reiser (administrative case with DOPL) each are based on the facts pertaining to this case, from their different and varied roles in the case. Each of them are highly experienced attorneys with a wealth of relevant experience. Their fact-based testimony is highly relevant on various issues: identifying the evidence associated with each of the various defamatory statements, whether Defendant failed to submit material and exculpatory evidence to the prosecution, etc.

Each of these three attorney witnesses certainly have the experience or expertise in “this field.” Reiser has been litigating DOPL cases since 1985. Reiser, who has litigated well over 100 such cases, may be the most experienced DOPL litigator in Utah. He has had at least a dozen DOPL cases involving Defendant Briggs.

Troy Rawlings, who has been the Davis County Attorney since 2007, has overseen the prosecution of 4,500 to 5,000 cases each year. He has been prosecuting cases since 2000. In this case, he was involved in various meetings and correspondence with Defendant Dan Briggs. Defendant supported his Motion for Summary Judgment (doc. 42), with the Declaration of Troy Rawlings as Exhibit 9 (see doc. 43). Now, however, Defendant wants to minimize Rawlings’ role in this case and his ability to testify. Rawlings was involved in the original meeting when Defendant

screened the case with the Davis County Attorney's Office. Rawlings also raised concerns about the decision to publish the Media Alert because it could be viewed as the prosecutor's office "trying to influence a potential jury pool." See Plaintiff's Exhibit 2.

Moffat was the defense attorney who contacted the Davis County Attorney's Office to highlight the crucial missing evidence such as the May 2, 2014 recorded interview at Defendant's office, the undercover video from DOPL investigator Travis Debring, the Ron Gowers videos, the Red Light documentation, the records showing patients' lost inches on the Ultra Slim device, etc. See Plaintiff's Exhibit 21, with various attachments. Moffat had extensive meetings/correspondence with the prosecutor's office which led to the criminal case being dismissed.

Moffat began his criminal defense career in 1987. He has worked thousands of cases, and dealt with many, many discovery issues over those years.

CONCLUSION

Based upon all of the above, Plaintiff requests that at the July 26th hearing, this Court address the issues related to Exhibit 118 and its ruling regarding the testimony of three attorney witnesses and of Defendant witness David Furlong.

DATED this 20th day of July, 2023.

/s/ David W. Brown
David W. Brown
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of July, 2023, the preceding **PLAINTIFF'S MOTION TO REVIEW DEFENDANT'S EXHIBIT 118 AND COURT'S RULING ON OPINION TESTIMONY** was e-filed with the Court, which sent notice to the following, and also emailed to utdecf_waddoups@utd.uscourts.gov and to the following:

Kyle J. Kaiser
Heather Chesnut
Assistant Attorneys General
Heber M. Wells Building
160 East 300 South, 6th floor
P.O. Box 140856
Salt Lake City, UT 84114-0856

David W. Brown



<https://mail.google.com/mail/u/0?ik=1e5bf1c03&view=pt&search=all&permthid=thread...>

Jennifer Bolton <jenniferbolton@utah.gov>

Fwd: Attached Image

2 messages

Mark Steinagel <msteinagel@utah.gov>

Mon, Mar 23, 2015 at 1:00 PM

To: Francine Giani <fgiani@utah.gov>, Jennifer Bolton <jenniferbolton@utah.gov>, Thomas Brady <tbrady@utah.gov>
Cc: David Paul Furlong <dfurlong@utah.gov>, Daniel Briggs <DL.Briggs@utah.gov>

Dan Briggs recently filed the forwarded felony charges against Dr Kunzler. Troy Rawlings' office is the prosecuting office.

This situation is similar in type to the Babcock case in the practitioner's willingness to defraud people.

I agree with David that this would be a good press release.

Dan and David were timely in providing to me the recommendation, but I did not review it until today. You can determine if it is too stale.

Mark

----- Forwarded message -----

From: David Furlong <dfurlong@utah.gov>

Date: Fri, Mar 13, 2015 at 1:06 PM

Subject: Fwd: Attached Image

To: Mark Steinagel <msteinagel@utah.gov>

Cc: Daniel Briggs <dbriggs@utah.gov>

Dan did a GREAT job on this investigation. Do we want to consider doing a press release on this?

----- Forwarded message -----

From: "Daniel Briggs" <dbriggs@utah.gov>

Date: Mar 13, 2015 1:01 PM

Subject: Fwd: Attached Image

To: "David Furlong" <dfurlong@utah.gov>

Cc:

Attached copy of information on Dr. Kunzler. Its only 11 felonies but it is now public

Dan Briggs, Investigations Supervisor
Division of Occupational and Professional Licensing.
Box 146741

160 east 300 South

Salt Lake City, UT 84114-6741

801-530-6277

1 of 2

9/13/2019, 11:17 AM

Defendant's Exhibit no. 118 - 001

State of Utah Mail - Fwd: Attached Image

<https://mail.google.com/mail/u/0?ik=1cf5bf1c03&view=pt&search=all&permthid=thread...>

Forwarded message

From: <noreply@utah.gov>
Date: 2015-03-13 12:58 GMT-06:00
Subject: Attached Image
To: "Briggs, Daniel" <dbriggs@utah.gov>

Mark Steinagel
Director
Division of Occupational and Professional Licensing
Utah Department of Commerce

 2587_001.pdf
290K

Mon, Mar 23, 2015 at 1:22 PM

Francine Glanl <fglanl@utah.gov>
To: Mark Steinagel <msteinagel@utah.gov>
Cc: Jennifer Bolton <jenniferbolton@utah.gov>, Thomas Brady <tbrady@utah.gov>, David Paul Furlong <dfurlong@utah.gov>, Daniel Briggs <DL.Briggs@utah.gov>

Sounds great!!!!

Sent from my iPhone
[quoted text hidden]

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